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FOIA Appeal - FOIA Requests 10-FOI-00264-12 and HQ FOI-01421-12

Hobbs, Angela J (LAW) to: FOIA HQ

11/30/2012 01:08 PM

Cara Steiner-Riley, Stephanie Kercheval, Linda
Cc: Anderson-Carnahan, "Heese, Ruth Hamilton (LAW)",
"Edenshaw-Chafin, Emily R (LAW)"

Please see attached freedom of information act appeal. The original will follow via USPS. Let me know if you have troubles opening the document. Thank you!

Angie Hobbs
Law Office Assistant II
Labor & State Affairs Section
Attorney General's Office – Juneau Civil Division
907-465-2128 – Direct Line
907-465-2520 - Fax

Important notice to e-mail recipients: do not read, print, copy, or disseminate this communication unless you are the intended recipient. This e-mail communication may contain confidential and/or privileged information. If you have received this e-mail in error please contact me at the telephone number or e-mail address above.



FOIA Appeal.pdf

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ENVIRONMENTAL SECTION

P.O. BOX 110300
DIMOND COURT HOUSE, 4TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

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NOV 30 2012

November 30, 2012

Via First Class U.S. Mail and E-Mail

National Freedom of Information Officer
U.S. EPA, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: **Freedom of Information Act Appeal**
Freedom of Information Request 10-FOI-00264-12 and HQ FOI-01421-12;

Dear Sir or Madam:

This is a Freedom of Information Act (FOIA) Appeal under 40 C.F.R. 2.104(j).

On November 7, 2012, I received an "interim response" from EPA Region 10, dated November 2, 2012, on a FOIA request that I submitted on behalf of the State of Alaska. EPA's November 2nd interim response (copy enclosed) was signed by Linda Anderson-Carnahan, Director of the Office of Ecosystems, Tribal, and Public Affairs. It transmitted a CD with several scanned documents in pdf format.

The interim response specifically states that it "is not an adverse determination." And the characterization of the response as "interim" indicates that EPA will be – as EPA representatives has specifically acknowledged in other communications with me – supplementing its response with additional information. However, the interim response immediately goes on to list a number of determinations upon which I have the "right to appeal," including, but not limited to,

- "[r]ecords denied in whole or in part" (of which, notably, EPA has not yet given an accounting);
- "[n]o responsive records have been located" (which is clearly not the case and production is expected to continue); and

- “[d]enied request for fee waiver” (which EPA has, in fact, granted in part based on earlier communications between myself and EPA representatives).

The response then goes on to state that I must appeal the listed adverse determinations in writing no later than 30 days and that any appeal received after that date will not be considered.

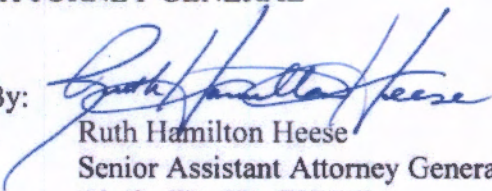
Notwithstanding the November 2d response’s assertion that it does not contain an “adverse determination” or that it is interim (and therefore not yet complete), because of the listing of what appear to be boilerplate determinations for FOIA responses that imply there has indeed been an adverse determination(s) on the State’s FOIA request, the State is compelled to file this appeal. This appeal is to any “adverse determination” that EPA intended to communicate in its November 2nd response. Additionally, the State appeals the apparent omission or withholding of relevant and responsive information that would reasonably be expected to have been produced, *i.e.*, copies of the transmittal memos or cover letters to the House Committee on Oversight and Government Reform that originally accompanied the documents EPA included on the CD.

Thank you for your prompt attention to this appeal.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:


Ruth Hamilton Heese
Senior Assistant Attorney General
Alaska Bar No. 9406064

cc (via email):

Linda Anderson-Carnahan, EPA Region 10
Stephanie Kercheval, EPA Region 10
Cara Steiner-Riley, EPA Region 10



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

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NOV 07 2012

Attorney Generals Office
Juneau

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

NOV 02 2012

Ruth Hamilton Heese
Department of Law
Office of the Attorney General
State of Alaska
P.O. Box 110300
Dimond Courthouse, 6th Floor
Juneau, AK 99811-0300

Re: Freedom of Information Request 10-FOI-00264-12 and HQ-FOI-01421-12

Dear Ms. Hamilton Heese:

This is an interim response to your Freedom of Information Act (FOIA) request first received by the U.S. Environmental Protection Agency (EPA) on May 31, 2012, and subsequently modified on October 03, 2012, regarding potential large-scale mining in the Bristol Bay watershed, Alaska.

The EPA has already provided you with some information responsive to your request. We have shared with you a FTP website that linked you to a "reading room" for Bristol Bay and the external formal correspondence EPA has had on this matter. Enclosed with this letter are more records responsive to your request. Specifically enclosed are the communications the EPA has shared with the US House of Representatives' Committee on Oversight and Government Reform on Bristol Bay regarding: emails and written communications between 14 EPA employees and non-federal external parties regarding the Bristol Bay watershed assessment and the possible application of Section 404 of the Clean Water Act to mining activities in that area. Some of the communications are redacted for privacy reasons pursuant to FOIA Exemption 6. The EPA will be sending you the rest of the external database in the near future.

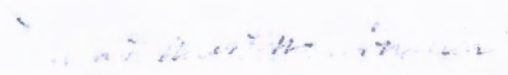
This is not an adverse determination. However, under FOIA you have the right to appeal the following determinations:

- Records denied in whole or in part;
- No responsive records have been located;
- Denied request for fee waiver in whole or in part;
- Denied request for expedited treatment;
- Request fee category assignment;
- Agency has fully responded but because of the voluminous nature of the request, the requester may challenge the reasonableness of the search for records

Submit your written appeal to the National Freedom of Information Officer at U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions regarding this FOIA response, please do not hesitate to call Cara Steiner-Riley, the EPA attorney handling this matter, at (206) 553-1142 or by email at steiner-riley.cara@epa.gov.

Sincerely,


Linda Anderson-Carnahan, Director
Office of Ecosystems, Tribal, and Public Affairs

Enclosures

cc: Sheila Eckman, EPA
Stephanie Kercheval, EPA FOIA
Cara Steiner-Riley, EPA

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
ENVIRONMENTAL SECTION

SEAN PARNELL, GOVERNOR

P.O. BOX 110300
DIMOND COURTHOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

May 30, 2012

10-F01-00264-12

Via E-mail and U.S. First Class Mail

Ms. Lisa Jackson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington DC, 20460
Jackson.lisap@epa.gov

Mr. Dennis McLerran
Regional Administrator
EPA Region X
RA 140
1200 Sixth Avenue
Seattle, WA 98101
McLerran.Dennis@epamail.epa.gov

2013 MAY 31 PM 12:25
RECEIVED
OFFICE
ETPA
ORC

Re: Freedom of Information Act Request

Dear Ms. Jackson and Mr. McLerran:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522, on behalf of the State of Alaska ("Alaska"). In processing this FOIA request, I ask that you and other Environmental Protection Agency (EPA) personnel assigned to process this request take cognizance of EPA FOIA regulations, any memorandum from the President to heads of departments and agencies regarding the Act, and any memorandum from the Attorney General to heads of departments and agencies regarding the Act. If it is apparent that a copy of this request should be forwarded to another office (including EPA's Anchorage or Seattle offices) to ensure that EPA provides a complete response to this request, please do so. Please also provide a complete log (i.e., "Vaughn Index") of any documents not disclosed in response to this FOIA request.

Documents Requested

Please search for and provide copies of documents in the possession of EPA relating to the following topics:

- EPA's consideration and potential exercise of authority under Section 404(c) of the Clean Water Act in Alaska on possible development projects in the Bristol Bay area, including the so-called "Pebble Mine." We seek documents that include, but are not limited to, the following:
 - any requests made to EPA to exercise its Section 404(c) authority;

OTHER

- any other correspondence (including email) on this topic that EPA has had with any state or federal governmental agencies or lawmakers, other federal offices, or other third parties (including but not limited to nongovernmental organizations or other groups or individuals); and
 - any schedules (draft or otherwise) relating to EPA's potential exercise of its Section 404(c) authority.
- EPA's "External Review Draft" dated May 2012 of "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska," also referenced frequently as EPA's "Draft Bristol Bay Watershed Assessment," (hereinafter "assessment"). We seek documents that include, but are not limited to, the following:
 - any correspondence (including email), analyses, or memoranda relating to EPA's final determination that it can and would proceed to develop and issue the assessment based on Section 104(a) and (b) of the Clean Water Act;
 - any correspondence (including email) EPA has had with any other person, organization, or state or federal agency regarding the development of the assessment;
 - any correspondence (including email) related to the nomination, review, and selection of members for the external peer review panel;
 - any internal correspondence (including email), analyses, or memoranda regarding the development of the assessment, as well as related to the nomination, review, and selection of external peer review panel members; and
 - any schedules (draft or otherwise) relating to the development and issuance of a draft or final assessment.

Date Scope of Search

We request EPA to search for and provide copies of documents relative to the above topics that were generated, sent, or received by EPA as far back as January 1, 2007, through to the date of EPA's receipt of this letter.

Definitions

The following definitions shall govern this request:

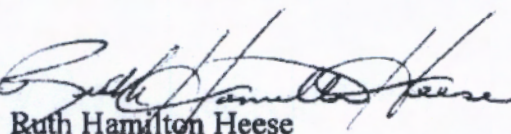
The term "documents" or "document" shall mean any written, printed, typed, electronically recorded, handwritten or graphic documentation, originals, copies, nonconforming copies which contain deletions, insertions, handwritten notes

Please call or email me, ruth.hamilton.heese@alaska.gov, to provide any information which would accelerate this process. Please also inform me if the estimated cost of responding to this FOIA request will exceed \$250.00. Thank you very much for your cooperation and expeditious handling of this request.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:



Ruth Hamilton Heese
Senior Assistant Attorney General
Alaska Bar No. 9406064

RHH/vms

cc: National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20430

or comments, including, but without limitation to, all letters, correspondence, electronic mail, records of conferences, memoranda, faxes, handwritten notes, interoffice or interdepartmental communications, summaries, telephone logs and records, communications, desk calendars, diaries, appointment books, agenda, meeting minutes, recorded conversations, schedules, reports, studies, analyses, lists, surveys, projections, calculations, contracts, agreements or proposed agreements, interviews, speeches, transcripts, depositions, press releases, brochures, affidavits, investigations, working reports, computer data, studies, cited reference materials, bibliography materials, source data, maps, video tapes, photographs, tape recordings, wire recordings, diagrams, computer tapes, and other data computations and paper similar to any of the foregoing and other writings of every kind and description (whether or not actually used) and other data computations from which information can be obtained.

The term "schedule" as used above is intended to be comprehensive, and includes, but is not limited to, any narrative describing a specific date schedule, time frame, general schedule, or any calendar, graph, or timeline or other document displaying a schedule, in draft or final form.

Potential Refinement of FOIA Request

I would be willing to discuss specific instances of deletion or other exemption claims in advance of any final decision to withhold any materials. In order to minimize the burden on the agency in producing and copying the documents, we would also accept documents in electronic format by hard disk or storage device. In addition, we would be pleased to discuss narrowing application of the above definition for certain categories of documents and to confer generally to discuss the most efficient process for producing the requested documents with a minimum of work for both parties. For example, if EPA grants Alaska Attorney General Michael Geraghty's request (set forth in a separate letter dated May 29, 2012) that EPA immediately post to EPA's Bristol Bay website complete pdfs of each of the cited reference, bibliography, and source data materials (roughly 2,000 documents) that are listed throughout the three-volume assessment, that web posting would eliminate the need for EPA to supply hardcopies of the assessment's listed information in response to this FOIA request.



FOIA Request
Schoenheit, Victoria M (LAW)
to:
R10.FOIA
05/31/2012 10:09 AM
Hide Details
From: "Schoenheit, Victoria M (LAW)" <victoria.schoenheit@alaska.gov>
To: R10.FOIA@EPA,

2 Attachments



image003.png FOIA Request EPA BBWA FINAL.pdf



Please see attached request, it was inadvertently sent to the wrong region yesterday. Thank you.

From: Schoenheit, Victoria M (LAW)
Sent: Wednesday, May 30, 2012 4:26 PM
To: 'Jackson.lisap@epa.gov'; 'McLerran.Dennis@epamail.epa.gov'; 'r3foia@epa.gov'
Cc: 'Heese, Ruth Hamilton (LAW) (ruth.hamilton.heese@alaska.gov)'
Subject: FOIA Request

Good Afternoon:

Please see attached correspondence from Senior Assistant Attorney General Ruth Hamilton Heese. Thank you.

Victoria Schoenheit
Legal Office Assistant II
Attorney General's Office
Environmental/Labor & State Affairs/
Commercial & Fair Business

(907) 465-6723 direct
(907) 465-6735 fax



CONFIDENTIALITY NOTICE: This communication with its content and any attachments may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

***** ATTACHMENT NOT DELIVERED *****

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer program could
contain a computer virus which could cause harm to EPA's computers,
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced
into the EPA network. EPA is deleting all computer program attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you
should contact the sender and request that they rename the file name
extension and resend the Email with the renamed attachment. After
receiving the revised Email, containing the renamed attachment, you can
rename the file extension to its correct name.

For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****